

Message Text

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ACTION ARA-10

INFO OCT-01 EA-06 ISO-00 ARAE-00 AEC-05 AID-05 CEA-01

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC PRIORITY 2725

INFO AMEMBASSY TOKYO

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 9615

EO 11652 CGDS

TAGS: EGEN, PINT, PFOR, ENRG, PE

SUBJECT: MILITARY GOVERNMENT DEFENDS JAPANESE-PERUVIAN

PIPELINE ACCORDS, HARSHLY ATTACKS CONTRACT

CRITICS AS UNPATRIOTIC

REFS: LIMA 9579, LIMA A-239, LIMA 7814

1. SUMMARY: IN NOVEMBER 13 COMMUNIQUE FROM GOP'S CENTRAL INFORMATION OFFICE, THE MILITARY GOVERNMENT DENOUNCED LIMA BAR ASSOCIATION AND OTHER CRITICS OF THE JAPANESE-PERUVIAN PIPELINE CONTRACTS FOR COMMITTING UNPATRIOTIC ACTS IN EFFORT HOLD UP DEVELOPMENT OF COUNTRY AND DISCREDIT GOP. COMMUNIQUE EMPHASIZED THAT CRITICS DELIBERATELY HAVE MISINTERPRETED WORDING OF PERUVIAN CONSTITUTION WHICH OF COURSE DOES NOT REQUIRE LOAN CONTRACTS WITH COMPANIES OUTSIDE PERU TO BE SUBJECT TO PERUVIAN LAW. GOP STRESSES THAT SUCH CRITICISM IS A MALICIOUS EFFORT ON PART OF ITS ENEMIES WHO IGNORE NATURE OF CONTRACTS AND OF ECONOMIC BENEFITS TO PERU FROM CONTRACTS WHICH FOLLOW STANDARD INTERNATIONAL COMMERCIAL PROCEDURES, INTERNATIONAL LAW, AND PRESENT-
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DAY PRACTICE. WHILE SOMEWHAT HYPOCRITICAL GIVEN NATURE

OF MILITARY GOVERNMENT'S OWN CRITIQUE OF EX-PRESENTIDET BELAUNDE'S ACTIONS, IT IS APPARENT THAT GOP HAS DECIDED TO MEET STINGING CRITICISM HEAD-ON WITH ARGUMENTS THAT PERUVIAN CONSTITUTIONAL PROVISIONS IN REGARD TO CONTRACTS APPLY ONLY TO COMPANIES ACTUALLY OPERATING IN PERU, AND HAVE NO EXTRATERRITORIAL CHARACTER. WE PRESUME PRESIDENT VELASCO WHO HAS SCHEDULED A PRESS CONFERENCE FOR THIS AFTERNOON FOLLOWING PRESENTATION OF LETTERS OF CREDENCE BY TWO NEW AMBASSADORS WILL HAVE MORE TO SAY ON THIS SUBJECT AT THAT TIME. END SUMMARY.

2. GOP COMMUNIQUE OPENS WITH BROAD-GUAGE ATTACK AGAINST THE CAMPAIGN BY "ENEMIES OF THE REVOLUTION TO SABOTAGE THE DEVELOPMENT PLANS OF THE COUNTRY"-IN AN EFFORT TO DISHONOR THE ARMED FORCES AND THE REVOLUTION. IT STATES THAT THE PIPELINE CONTRACTS FORM A WHOLE AND THAT THEY REFER TO THE FINANCING OF THE PROJECT, BUT NOT TO THE ACTUAL CONSTRUCTION OF THE PIPELINE. CONSEQUENTLY, THESE AGREEMENTS ARE NOT COVERED BY ART. 17 OF THE PERUVIAN CONSTITUTION, ALTHOUGH OTHER COMPANIES, WHICH WILL ACTUALLY BUILD THE PROJECT IN PERU ARE TO BE INCLUDED WITHIN THE TERMS OF ART. 17 AND ARE THEREFORE UNDER THE JURISDICTION OF PERUVIAN LAW AND COURTS.

3. TURNING TO THE NATURE OF ART. 17 ITSELF, THE COMMUNIQUE NOTES THAT THE LIMA BAR ASSOCIATION CENTERS ITS ARGUMENTS ON THIS ARTICLE WHICH MAKES REFERENCE TO CONTRACTS BY THE PERUVIAN STATES WITH FOREIGNERS. THE COMMUNIQUE STATES THAT IN ORDER TO MAKE ITS ARGUMENTS STAND, THE BAR ASSOCIATION QUOTED ONLY A PARTIAL TEXT OF ART. 17, IGNORING THE FIRST SENTENCE OF THE ARTICLE WHICH CONTAINS THE ESSENTIAL MEANING OF THE COMPLETE ARTICLE, TO-WIT: "COMMERCIAL COMPANIES, EITHER LOCAL OR FOREIGN, ARE SUBJECT, WITHOUT RESTRICTION, TO THE LAWS OF THE REPUBLIC. " NO ONE, STATES THE GOP ANNOUNCEMENT, CAN PRETEND TO INTERPRET THIS PART OF THE CONSTITUTION AS APPLYING TO ALL COMMERCIAL COMPANIES THROUGHOUT THE WORLD. THIS, THE SECOND PART OF THE ART. WHICH STATES: " IN EVERY CONTRACT BY THE STATE WITH FOREIGNERS...THERE MUST BE AN EXPRESS SUBMISSION OF THE SECOND PARTY TO THE LAWS AND

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COURTS OF THE REPUBLIC AND ITS RENUNCIATION TO ANY DIPLOMATIC CLAIM, " MERELY AMPLIFIES THE FIRST PART WHICH CONCERNS CONTRACTS FOR OPERATIONS WITHIN THE COUNTRY AND WHICH, NOTES THE COMMUNIQUE, INCORPORATES THE CALVO DOCTRINE INTO PERUVIAN LAW. CONTINUING, IT STATES THAT THE SITUATION IS VERY DIFFERENT WHEN STATE ENTERPRISES UNDERTAKE OPERATIONS OVERSEAS WITH FOREIGN ENTERPRISES WHICH ARE NOT IN PERU, NOR LEGALLY REGISTERED IN PERU, AND ART. 17'S PROHIBITIONS

APPLY EVEN LESS WHEN THE OPERATION CONCERNS FINANCING CONTRACTS OR LOANS. TO IGNORE THESE FACTS AND TO ATTRIBUTE AN EXTRATERRITORIAL CHARACTER TO ART . 17 CONSTITUTES A REPREHENSIBLE ACT BECAUSE "IT IS AN EFFORT TO INFLUENCE LOCAL AND FOREIGN OPINION IN REGARD TO A SITUATION WHICH TOUCHES THE HIGHEST NATIONAL INTERESTS OF THE REPUBLIC."

3. THE COMMUNIQUE ALSO STATES THAT INTERNATIONAL COMMERCIAL LAW IS WELL KNOWN AND THAT TO PRETEND OTHERWISE IS TO DEFAME THE REPUBLIC, FOR INTERNATIONAL ECONOMIC TRANSACTIONS INCLUDING LOANS ARE AN ACCEPTED PART OF EVERYDAY COMMERCIAL LIFE, RECOGNIZED BY PERUVIAN LAW, INTERNATIONAL LAW, AND PRESENT DAY PRACTICE. TURNING TO OTHER CRITICISM LEVELED AT THE GOP BY THE LAWYERS, THE COMMUNIQUE SAYS THAT IT IS FALSE TO EMPHASIZE BENEFITS WHICH WILL ACCRUE TO JAPAN FROM THE CONTRACTS. IN FACT THE PERUVIAN SIDE IS WELL AWARE THAT THE CONTRACTS BASIC JUSTIFICATION CONCERNS THE "DEVELOPMENT OF OIL RESOURCES", WHICH "WILL CARRY OUT AN EXTREMELY IMPORTANT ROLE FOR THE PROGRESS AND PROSPERITY OF THE STATE." TO JAPAN, THE CONTRACTS MEAN ABOUT ONE PERCENT OF ITS OIL NEEDS, BUT TO PERU THE CONTRACTS REPRESENT A VITAL STEP IN THE COUNTRY'S DEVELOPMENT. THE GOP MESSAGE ALSO NOTES THAT INTERNAL PETROLEUM CONSUMPTION WILL BE MET FIRST, BEFORE CRUDE AND REFINED PRODUCTS ARE FURNISHED TO THE JAPANESE. THE COMMUNIQUE ALSO ADDS UP DIRECT ECONOMIC BENEFITS, INCLUDING AN ESTIMATED SAVING OF \$250 MILLION IN INTEREST COSTS SINCE THE JAPANESE ARE LOANING THE MONEY AT 6.3 PERCENT INTEREST AND CURRENT RATES ARE 12 PERCENT. THE CONTRACTS ALSO PROVIDE FOR NEW ADDITIONAL LOANS TO FINANCE THE INTEREST COST DURING THE FIRST FOUR YEARS AFTER THE FOUR YEAR GRACE PERIOD WHICH WILL, ACCORDING TO THE GOP, SAVE THE COUNTRY ANOTHER \$150 MILLION.

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C O N F I D E N T I A L SECTION 2 OF 2 LIMA 9615

4. THE COMMUNIQUE CONCLUDES THAT THE FINANCIAL OPERATION IS LEGAL AND UNDERTAKEN WITHIN THE LIMITS OF CONSTITUTIONAL REQUIREMENTS AND INTERNATIONAL LAW. IT ENDS BY CONDEMNING SMALL UNPATRIOTIC GROUPS WHICH HAVE COMMITTED "AN INFAMOUS OFFENSE...WITH THE DELIBERATE GOAL OF DISCREDITING THE MILITARY GOVERNMENT...AND OF HOLDING UP THE DEVELOPMENT OF THE COUNTRY."

5. COMMENT: UNDOUBTEDLY CONCERNED BY THE PUBLICITY GIVEN THIS ISSUE AND POSSIBLE HESITATION ON THE PART OF THE JAPANESE WHO HAVE FOUND THEMSELVES EMBROILED IN A HEATED DOMESTIC POLITICAL CONTROVERSY, THE GOP HAS STRUCK THE BAR ASSOCIATION HEAD-ON WITH WHAT, ON BALANCE, MUST BE CONSIDERED A REASONABLE, IF HYPOCRITICAL ARGUMENT. ALTHOUGH THE ACTUAL WORDING OF ART. 17 IS AMBIGUOUS AND, OUT OF CONTEXT, CAN BE READ TO APPLY TO "ALL CONTRACTS WITH FOREIGNERS", IN PRACTICE SUCH A POLICY WOULD MEAN THE EFFECTIVE END OF MOST INTERNATIONAL LOANS TO PERU. THE GOP HAS ALSO TAKEN PAINS TO POINT OUT THE PRESUMED ECONOMIC ADVANTAGES TO PERU AND TO INDICATE THAT ALL COMPANIES ACTUALLY OPERATING WITHIN PERU WILL HAVE TO CONFORM TO ART. 17'S TERMS. A FURTHER CONFIDENTIAL

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INDICATION THAT THE GOP HAD DECIDED TO "HANG TOUGH" IN THIS AFFAIR IS THE RUMOR CIRCULATING THAT GENERAL FERNANDEZ BACA, PRESIDENT OF PETROPERU, MAY HAVE SUBMITTED HIS RESIGNATION, ONLY TO HAVE IT SUMMARILY REJECTED BY THE GOP. APPARENTLY THERE ARE TO BE NO SCAPEGOATS, AT LEAST FOR THE PRESENT.
DEAN

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